

REMARKS

The Final Office Action mailed May 16, 2007, has been received and reviewed. Claims 1-18, 20-42, 44, 45, 48-50 and 52-75 are currently pending in the application. Claims 19, 43, 46, 47 and 51 have been cancelled. Claims 1-4, 6, 7, 9-18, 20-24, 27-32 and 34-36 stand rejected. Claims 5, 8, 25, 26, 32, 33, and 37-39 have been objected to as being dependent upon rejected base claims, but the indication of allowable subject matter in such claims is noted with appreciation. Claims 40-42, 44, 45, 48-50 and 52-75 are allowed. Applicants propose to amend claims 1, 15-18, 20-24, and 26, and respectfully request reconsideration of the application as proposed to be amended herein. The subject matter of claim 5 has been incorporated into claim 1. The subject matter of claim 25 has been incorporated into claim 15. Claims 16-18, 20-24, and 26 have been amended to improve antecedent basis. Claims 5 and 25 have been cancelled.

35 U.S.C. § 102 Anticipation Rejections

Anticipation Rejection Based on U.S. Patent No. 6,419,112 to Bruce et al.

Claims 1-4, 6, 7 and 9-11 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Bruce et al. (U.S. Patent No. 6,419,112). Applicants respectfully traverse this rejection, as hereinafter set forth.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Claim 5 stands objected to as being dependent upon a rejected base claim, but is indicated to contain allowable subject matter and would be allowable if placed in appropriate independent form. Claim 1 has been amended to include all of the limitations of claim 5. Consequently, it is believed that claim 1, as amended herein, is in condition for allowance.

Claims 2-4, 6, 7 and 9-11 are each allowable, among other reasons, as depending from claim 1, which should be allowed.

Anticipation Rejection Based on U.S. Publication No. 2002/0020708 to Weiss et al.

Claims 1, 13 and 14 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Weiss et al. (U.S. Publication No. 2002/0020708). Applicants respectfully traverse this rejection, as hereinafter set forth.

Claim 5 stands objected to as being dependent upon a rejected base claim, but is indicated to contain allowable subject matter and would be allowable if placed in appropriate independent form. Claim 1 has been amended to include all of the limitations of claim 5. Consequently, it is believed that claim 1, as amended herein, is in condition for allowance.

Claims 13 and 14 are each allowable, among other reasons, as depending from claim 1, which should be allowed.

Anticipation Rejection Based on U.S. Patent No. 3,257,025 to Jolly

Claims 27-31 and 34-36 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Jolly (U.S. Patent No. 3,257,025). Applicants respectfully traverse this rejection, as hereinafter set forth.

Jolly describes an insulating tumbler for a beer or soft drink can. The tumbler 20 includes a flared upper portion 30 which defines a pouring or drinking lip. (Col. 2, lines 67-72)

Claim 27 recites a sleeve structure, comprising: a side wall sized and configured to encompass at least a portion of a first container having a selected size and shape and to form a space between the first container assembled therewith and the side wall of the sleeve structure; at least one stabilizing feature sized and configured to *bias against* and engage at least a portion of another, like sleeve structure associated and assembled with a second container having a selected size and shape, following the second container being positioned generally longitudinally above the first container, with a lid positioned therebetween. (emphasis added)

Jolly does not describe a sleeve structure having a stabilizing feature sized and configured to *bias against* and engage at least a portion of another sleeve structure associated with a second container. Rather, the insulating tumbler of Jolly includes an outwardly flaring upper portion 30 which defines a pouring or drinking lip. (FIG. 2, Col. 2, lines 67-72) The outwardly flaring

drinking lip is not configured to bias against and engage another insulating tumbler positioned thereabove.

Therefore, it is respectfully submitted that the references fail to teach each and every element of independent claim 27. Accordingly, it is respectfully submitted that the rejection to independent claim 27 should be withdrawn.

Claims 28-31 and 34-36 are each allowable, among other reasons, as depending from claim 27, which should be allowed.

Anticipation Rejection Based on U.S. Patent No. 6,883,677 to Goeking et al.

Claims 15-18 and 20-23 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Goeking et al. (U.S. Patent No. 6,883,677). Applicants respectfully traverse this rejection, as hereinafter set forth.

Claim 25 stands objected to as being dependent upon a rejected base claim, but is indicated to contain allowable subject matter and would be allowable if placed in appropriate independent form. Claim 15 has been amended to include all of the limitations of claim 25. Consequently, it is believed that claim 1, as amended herein, is in condition for allowance.

Claims 16-18 and 20-23 are each allowable, among other reasons, as depending from claim 15, which should be allowed.

35 U.S.C. § 103(a) Obviousness Rejections

Obviousness Rejection Based on U.S. Patent No. 6,419,112 to Bruce et al. in view of U.S. Patent No. 4,978,024 to Newman

Claim 8 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Bruce et al. (U.S. Patent No. 6,419,112) in view of Newman (U.S. Patent No. 4,978,024). Applicants respectfully traverse this rejection, as hereinafter set forth.

M.P.E.P. 706.02(j) sets forth the standard for a Section 103(a) rejection:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, **the prior art reference (or**

references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). (Emphasis added).

The nonobviousness of independent claim 1 precludes a rejection of claim 8 which depends therefrom because a dependent claim is obvious only if the independent claim from which it depends is obvious. *See In re Fine*, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988), *see also* MPEP § 2143.03. Therefore, the Applicants request that the Examiner withdraw the 35 U.S.C. § 103(a) obviousness rejection to claim 8 which depends from allowable independent claim 1.

Obviousness Rejection Based on U.S. Patent No. 6,419,112 to Bruce et al.

Claim 12 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Bruce et al. (U.S. Patent No. 6,419,112). Applicants respectfully traverse this rejection, as hereinafter set forth.

Claims 12 is allowable, among other reasons, as depending from claim 1, which should be allowed.

Obviousness Rejection Based on U.S. Patent No. 6,883,677 to Goeking et al.

Claim 24 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Goeking et al. (U.S. Patent No. 6,883,677). Applicants respectfully traverse this rejection, as hereinafter set forth.

Claim 24 is allowable, among other reasons, as depending from claim 15, which should be allowed.

Objections to Claims 5, 8, 25, 26, 32, 33, 37-39/Allowable Subject Matter

Claims 5, 8, 25, 26, 32, 33, 37-39 stand objected to as being dependent upon rejected base claims, but are indicated to contain allowable subject matter and would be allowable if placed in appropriate independent form. The subject matter of claim 5 has been incorporated into claim 1. The subject matter of claim 25 has been incorporated into claim 15. Although the indication of additional allowable subject matter is noted with appreciation, Applicants respectfully submit that claims 8, 26, 32, 33, and 37-39 are allowable as presently presented.

ENTRY OF AMENDMENTS

The proposed amendments to claims 1, 15-18, 20-24, and 26, above should be entered by the Examiner because the amendments are supported by the as-filed specification and drawings and do not add any new matter to the application. Further, the amendments do not raise new issues or require a further search. The subject matter of claim 5 has been incorporated into claim 1. The subject matter of claim 25 has been incorporated into claim 15. Claims 16-18, 20-24, and 26 have been amended to improve antecedent basis. Finally, if the Examiner determines that the amendments do not place the application in condition for allowance, entry is respectfully requested upon filing of a Notice of Appeal herein.

CONCLUSION

Claims 1-4, 6-18, 20-24, 26-42, 44, 45, 48-50 and 52-75 are believed to be in condition for allowance, and an early notice thereof is respectfully solicited. Should the Examiner determine that additional issues remain which might be resolved by a telephone conference, the Examiner is respectfully invited to contact Applicants' undersigned attorney.

Respectfully submitted,



Kirsten L. Dockstader
Registration No. 54,597
Attorney for Applicants
TRASKBRITT
P.O. Box 2550
Salt Lake City, Utah 84110-2550
Telephone: 801-532-1922

Date: July 13, 2007
KLD/dlm:cw

Document in ProLaw